

## BOOK REVIEW

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*Unionsrecht und Verwaltungsrecht: Eine rechtsvergleichende Untersuchung zur Rezeption des Unionsrechts*, Attila Vincze. Andrassy Studien zur Europaforschung, Band 17. Baden-Baden: Nomos Verlagsgesellschaft 2016. 360pp. Euro 69 pb. ISBN 9783848735655.

The transformation national administrative law as a result of European influences has a rich tradition of scholarly analysis. These focus mainly on the interactions among legal systems and examine adaptation pressures and the capability and/or willingness of adaptation arising from those interactions. Attila Vincze's smart, well-researched book, which originates from his habilitation dissertation, aims to bring new energy to the field by re-examining the problems of the national reception of European Union law through the comparison of reactions in five different Member State administrative orders (Austria, Czech Republic, Germany, the United Kingdom and Hungary) and by developing, on that basis, a novel conceptualization of the Europeanization of administrative law. It promises that by scrutinizing the differences (the different local patterns) and the similarities in the adaptation of the national administrative orders examined a more precise general theory of legal Europeanization can be constructed.

The book finds its conceptual and theoretical foundations in the disciplines of European public (administrative) law, in particular its German tradition, and comparative (public or administrative) law. Its comparative analysis, which is expected to provide the empirical basis for the theoretical work, focuses on the changes induced by the doctrines and interpretative constructions developed in the jurisprudence of the EU Court of Justice in five core domains of national administrative law. These are administrative discretion (1), the binding nature of administrative decisions (2), standing in judicial review (3), interim relief (4), and the liability in tort of administrative authorities (5). From this perspective, the book comes across as a traditionalist work; neither does it extend its investigation to more current developments in EU (administrative) governance, nor does it include in its scope the multitude of changes which follow from EU legislative harmonization. The central, predominantly empirical chapters deal with these five issues. These are preceded by an introductory chapter and chapters examining the academic state of the art. The book is closed by a thesis chapter summarizing very conveniently its findings.

Vincze's work relies extensively, and critically, on the functional notion of (legal) spill-over which has been used as the traditional explanatory frame for the

legal reception process in the Member States and for the dynamics of that process. In the book, it determines the conceptual premises of the analysis and is used as the starting point for theory-building. Two aspects of spill-over are put to in-depth scrutiny: one, that borrowing from foreign (European) law can be understood as a form of legal innovation and, second, that the undesirability of the parallel existence of legal regimes in the same legal space is a main driving-force behind cross-border adaptation. In this regard, the book makes the highly important observation that these two presumptions are neither sufficient, nor sufficiently complex for providing an appropriate explanation of what is actually taking place in national legal orders. For instance, Vincze contends that the progressive notion of legal innovation bears relevance only in the Member States which have insufficiently developed administrations and administrative law. Furthermore, even when the solutions offered in national administrative law are inadequate, innovation through Europeanization may only take place in case EU law offers a different, more appropriate solution to the legal problem waiting to be addressed. The parallelism of legal regimes within a single Member State is assessed similarly carefully. Vincze rightly observes that the coexistence of EU and national administrative law is a significant source of conflict for the national legal order. The latter will insist on safeguarding the value-basis of its legal institutions as well its deep layer of values, structures and institutions and will look at the particular, essentially regulatory logic of EU legal rules with suspicion. He also notes that in national administrative orders, which offer adequate legal responses to problems, law is likely to resist the European influence, especially when the latter has a low innovation potential.

The main finding of the book, which was developed on the basis of the results of the comparative research in the five jurisdictions, is that the process of legal Europeanization is much more complex than the simple borrowing of legal institutions and other legal constructions as driven by external pressures. Vincze points out that circumstances internal to the national administrative order – e.g., history of legal development, the institutional frame, the competence of actors etc. – make the process of adaptation highly complicated and may play a more important role than the external circumstances of cross-border legal fertilization. As an example, he notes that the relevant national actors noticing that assessment under EU and national law is factually different and that this bears relevance for national law can determine the fate and the success of legal adaptation. Internal factors also explain national resistance to Europeanization and the significantly different local patterns of adaptation. In fact, these may be explained only with reference to factors endogenous to national administrative laws. This finding corresponds with the book's initial suspicion that legal borrowing is a dynamic,

often unpredictable process, which is highly dependent on the characteristics of the receiving legal order, especially its internal structure and dynamics.

Vincze makes a number of enlightening observations concerning legal Europeanization, suitable for a seasoned comparatist. He asserts, for example, that the factual circumstances of adaptation – that the facts pertain to a matter governed by EU law – may bear as much relevance as the express legal obligation to adjust national law and governance to EU requirements. The book also highlights that it is important to distinguish between adaptation on the surface of law and changes implemented in the deep structure of national legal systems. It notes that there is very little evidence of actual spill-over effects, which finding is then explained by arguing that spill-over presumes a critical self-examination by the national legal order whether it suffers from substantive hiatuses which they are very reluctant to do. Vincze also points out that deeper-reaching differences between EU and national law, such as differences in doctrine, values or orientation usually delimit the influence of EU law and, as often is the result, the EU legal solution is kept in isolation alongside the similar/competing national legal solution applicable to domestic cases. Conscious resistance to the reception of EU law in such instances and the isolation of the EU legal solution within the national legal order usually follow from national actors recognizing the existence of differences and, then, pre-empting the complete internalization of EU law's solution by developing, provided that they are competent enough, a response in national law to the legal problem at issue. In this connection, Vincze found evidence of a clear intention to minimize the impact of EU law in the high-stakes domains of national administrative law, such as state liability for damages caused by legislation. The book also draws attention to the long-recognized issue that the bad or incomplete reception of EU law is undesirable not only from the perspective of the EU legal order, but also for national administrative law, as it undermines its internal coherence or challenges its core principles, such as legal certainty and equality before the law.

The novel theory, or rather conceptualization, of Europeanization promised by Vincze hinges on the following, empirically supported limbs. First, internal, domestic factors are as relevant as the external factors of Europeanization because national administrative laws do not just let themselves be altered by EU law. The deep structures and the higher-value components of national administrative law play an important role; they determine its adaptability and its openness for legal innovation and modernization. Third, a successful reception process assumes the 'lucky co-existence' of numerous external and internal factors, in particular the domestic willingness to change. Fourth, an ability of critical self-observation by national legal systems is a central prerequisite of Europeanization; underdeveloped administrative orders, administrative laws with an incomplete or fragmented

doctrinal and ideological basis incapable of self-reflection are likely to resist or ignore opportunities for change. Internal flexibility is another important precondition of the adaptability of national administrative laws. Finally, significant resistance to Europeanization or major impediments put in place indicate the presence of more general problems in national administrative law. These extend beyond the issue of legal adaptation and need to be solved by the national legal order itself.

The book is evidently aware of the wider stakes at play in the Europeanization process. It discusses legal adaptation not simply as a strategic response developed in the legal orders of the receiving Member States. Vincze knows the relevance of the ideological differences unearthed by the pressures urging the modification of national law. The book makes sure that the reader understands the value of Europeanization both for EU law and for membership in the EU. It argues that beyond securing formal legal compliance Europeanization is a necessary prerequisite for the mutual and effective realization of general objectives of the Union as well as the particular objectives of common policies. Where the analysis may fall short of expectations, especially in light of the recent Eastern European backsliding in constitutionalism and good governance, is that it does not emphasize sufficiently the historical opportunity, and the costs of missing out on that opportunity, Europeanization offered to Member States in political transition and their societies.

Vincze's book is a much welcome addition to the academic discourse which examines national administrative laws and administrative systems as integrated into a common legal space. Its critical observations bring new light onto, and in some places challenge, our assumptions about the capability of legal orders in Europe to innovate and improve.

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